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7

8 **BEFORE THE ARIZONA STATE BOARD OF PHARMACY**

9 In the Matter of

10 **JOSHUA ADAMS,**

11 Holder of License No. T006970  
12 As a Pharmacy Technician  
13 In the State of Arizona

Board Case No. 09-0040-PHR

**COMPLAINT AND NOTICE OF  
HEARING**

14 **I. NOTICE OF PUBLIC HEARING.**

15 YOU ARE HEREBY NOTIFIED, the Arizona State Board of Pharmacy ("Board")  
16 will conduct an administrative hearing at the following place and time, to determine  
17 whether grounds exist to revoke or take other action regarding Pharmacy Technician  
18 License No. T006970 held by Joshua Adams ("Respondent"):  
19

20 **Arizona State Board of Pharmacy**  
**1700 W. Washington Street, 3<sup>rd</sup> Floor Board Room**  
21 **Phoenix, Arizona 85007**  
**On September 24, 2009, at 9:00 a.m.**

22 and continuing on successive days until concluding, concerning the matters set forth in  
23 this Complaint and Notice of Hearing, at which time and place, evidence, testimony and  
24 argument in support of the charges set forth in the Complaint will be presented. If you  
25  
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1 desire to make a defense to the charges at the hearing, you may appear at the hearing in  
2 person and may be represented by legal counsel and may at that time cross-examine the  
3 witnesses against you and present testimony of witnesses, evidence and argument in your  
4 own behalf.

5       Whether or not you intend to appear at the hearing, pursuant to A.R.S. § 32-  
6 1927.01(O), **YOU ARE REQUIRED** to prepare and file a written Answer to the  
7 **allegations alleged in the above Complaint with the Board within 30 days after**  
8 **service of this Complaint and Notice of Hearing.** Your Answer should contain specific  
9 admissions or denials of the allegations of the Complaint, and may contain concise  
10 factual allegations which you contend constitute a ground or grounds for defense. Your  
11 Answer must be in writing, verified under oath, and filed with the Board within thirty  
12 (30) days after service of the Complaint. *Id.* **THE BOARD SHALL CONSIDER**  
13 **YOUR FAILURE TO RESPOND WITHIN THIS TIME AS YOUR ADMISSION**  
14 **BY DEFAULT TO THE ALLEGATIONS STATED IN THE COMPLAINT.** *Id.*  
15 The Board may then take any action allowed by A.R.S. § 32-1927.01 without conducting  
16 a hearing. If you Answer and fail to appear for the hearing, the Board may proceed in  
17 your absence. If you desire to waive a hearing and not contest the facts herein alleged,  
18 you may file an Answer consisting of a declaration that the material allegations of the  
19 Complaint are admitted.

20       After the hearing, if the Board determines that you have committed unprofessional  
21 conduct or that you are professionally incompetent or physically or mentally  
22 incapacitated to such a degree as to render you unfit to safely perform your employment  
23 duties, the Board may revoke or suspend your license, place you on probation, issue you  
24 a decree of censure or letter of reprimand, or impose upon you a civil penalty of not more  
25 than \$1,000 for each violation. A.R.S. § 32-1927.01(A), (B). The Board may also charge  
26

1 you for the costs of the administrative hearing. A.R.S. § 32-1927.01(C).

2 In accordance with Title II of the Americans with Disabilities Act (ADA), the  
3 Board does not discriminate on the basis of disability in admission to and participation in  
4 hearings. Should you, or anyone you call as a witness need special accommodations,  
5 please contact the Board office at (602) 771-2727 at least three working days before the  
6 hearing.

7 Pursuant to A.R.S. § 32-3206, you have the right to request a copy of the  
8 following information from the Board:

- 9 1. Any review conducted by an expert or consultant providing an evaluation  
10 of or opinion on the allegations.
- 11 2. Any records on the patient obtained by the board from other health care  
12 providers.
- 13 3. The results of any evaluations or tests of the health professional conducted  
14 at the board's direction.
- 15 4. Any other factual information that the board will use in making its  
16 determination.

17 Please be advised that if you obtain the above-referenced information from the board, you  
18 may not release it to any other person or entity or use it in any proceeding or action  
19 except the administrative proceeding or appeals related to the administrative proceeding.  
20 Violation of this restriction constitutes an act of unprofessional conduct per A.R.S. § 32-  
21 3206(B). Also, please be advised that pursuant to A.R.S. § 32-3206(C), you or your  
22 attorney may be charged for the cost of providing the information received up to the fee  
23 for making a copy of each page as prescribed by A.R.S. § 12-284(A).

#### 24 PARTIES AND JURISDICTION

25 1. The Board is the duly constituted authority for licensing and regulating the  
26 practice of pharmacy in the State of Arizona.

2. Respondent is the holder of license number T006970, which allows him to  
practice as a pharmacy technician in the State of Arizona.

1        3.     Under A.R.S. § 32-1901, *et seq.*, the Board possess jurisdiction over the  
2 subject matter and over Respondent as a licensee of the Board.

3                                **FACTUAL ALLEGATIONS**

4        1.     During all times relevant to this Complaint, Respondent was employed as a  
5 Pharmacy Technician at Wal-Mart Pharmacy #10-2113 in Phoenix, Arizona (the  
6 “Pharmacy”).

7        2.     In September and October 2008 Respondent was observed on surveillance  
8 video removing narcotic bottles from the pharmacy shelf, pouring the pills into his hands,  
9 and then placing the pills in his pocket.

10       3.     In October 2008, Wal-Mart loss prevention personnel interviewed  
11 Respondent concerning a loss of controlled substances. Respondent admitted diverting  
12 hydrocodone (hydrocodone/APAP) for personal consumption. Respondent was  
13 terminated from his employment with Wal-Mart.

14       4.     A subsequent audit by the Pharmacy documented shortages of the  
15 following:    685 tablets of hydrocodone/APAP 10/325; 1,588 tablets of  
16 hydrocodone/APAP 0/500; 416 tablets of hydrocodone/APAP 10/650; 650 tablets of  
17 hydrocodone/APAP 10/660; and 293 tablets of hydrocodone/APAP 7.5/750. The audit  
18 did not disclose who was responsible for the shortages.

19       5.     Hydrocodone/APAP is a Schedule III controlled substance. A.R.S. § 36-  
20 2514(A)(5)(d).

21                                **ALLEGED VIOLATIONS**

22       1.     The Board possesses jurisdiction over the subject matter and over  
23 Respondent pursuant to A.R.S. § 32-1901 *et seq.*

24       2.     Pursuant to A.R.S. § 32-1927.01(A)(1), the Board may discipline a  
25 pharmacy technician who has engaged in unprofessional conduct.  
26

1       3.     The conduct and circumstances described above constitute a violation of  
2 A.R.S. § 13-1802(A)(1) (A person commits theft if, without lawful authority, the person  
3 knowingly controls another person's property with the intent to deprive that other person  
4 of such property). Theft is a crime of moral turpitude. *State v. Superior Court of Pima*  
5 *County*, 121 Ariz. 174, 175-76, 589 P.2d 48, 49-50 (App. 1978) (shoplifting involves  
6 moral turpitude and bears a close relationship to the common law crime of larceny).

7       4.     The conduct and circumstances described above constitute a violation of  
8 A.R.S. § 13-3406(A)(1) (A person may not knowingly possess or use a prescription-only  
9 drug unless the person obtains the prescription-only drug pursuant to a valid prescription  
10 of a licensed prescriber). Furthermore, a person may not knowingly obtain or procure the  
11 administration of a prescription-only drug by fraud, deceit, misrepresentation or  
12 subterfuge. A.R.S. § 13-3406(A)(6). In either case, such illegal acquisition, possession  
13 or procurement of a prescription-only drug is a class 1 misdemeanor. A.R.S. § 13-  
14 3406(B)(1).

15       5.     The conduct and circumstances described above constitute a violation of  
16 A.R.S. § 36-2531(E) (A person may not knowingly or intentionally acquire or obtain  
17 possession of a controlled substance by means of forgery, fraud, deception or subterfuge).  
18 A person who violates A.R.S. § 36-2531(E) is guilty of a class 4 felony. A.R.S. § 36-  
19 2531(E).

20       6.     The conduct and circumstances described above constitute a violation of  
21 A.R.S. § 36-2525(H) (Except when dispensed directly by a medical practitioner to an  
22 ultimate user, a controlled substance included in schedule III or IV that requires a  
23 prescription order as determined under state or federal laws shall not be dispensed  
24 without a written or oral prescription order of a medical practitioner).

1       7.     The conduct and circumstances described above constitute a violation of  
2 A.R.S. § 36-2531(A)(1) (It is unlawful for any person who is subject to A.R.S. § 36-2521  
3 *et seq.* to intentionally or knowingly distribute or dispense a controlled substance in  
4 violation of section 36-2525). A person who violates A.R.S. § 36-2531(A)(1) is guilty of  
5 a class 4 felony. A.R.S. § 36-2531(B).

6       8.     The conduct and circumstances described above constitute a violation of  
7 A.R.S. § 32-1968(A) (“A prescription-only drug shall be dispensed only under one of the  
8 following conditions: (1) By a medical practitioner in conformance with A.R.S. § 32-  
9 1921; (2) On a written prescription order bearing the prescribing medical practitioner’s  
10 manual signature; (3) On an electronically transmitted prescription order containing the  
11 prescribing medical practitioner’s electronic or digital signature that is reduced promptly  
12 to writing and filed by the pharmacist; (4) On a written prescription order generated from  
13 electronic media containing the prescribing medical practitioner’s electronic or manual  
14 signature. A prescription order that contains only an electronic signature must be applied  
15 to paper that uses security features that will ensure the prescription order is not subject to  
16 any form of copying or alteration; (5) On an oral prescription order that is reduced  
17 promptly to writing and filed by the pharmacist; (6) By refilling any written,  
18 electronically transmitted or oral prescription order if a refill is authorized by the  
19 prescriber either in the original prescription order, by an electronically transmitted refill  
20 order that is documented promptly and filed by the pharmacist or by an oral refill order  
21 that is documented promptly and filed by the pharmacist.”)


22       9.     The conduct and circumstances described above constitute unprofessional  
23 conduct pursuant to A.R.S. § 32-1901.01(C)(6) (“Committing a felony, whether or not  
24 involving moral turpitude, or a misdemeanor involving moral turpitude or any drug-  
25  
26

1 related offense. In either case, conviction by a court of competent jurisdiction or a plea  
2 of no contest is conclusive evidence of the commission.”).

3 10. The conduct and circumstances described above constitute unprofessional  
4 conduct pursuant to A.R.S. § 32-1901.01(C)(8) (“Violating a federal or state law or  
5 administrative rule relating to marijuana, prescription-only drugs, narcotics, dangerous  
6 drugs, controlled substances or precursor chemicals when determined by the board or by  
7 conviction in a federal or state court.”).

8  
9 DATED this 24<sup>th</sup> day of MARCH, 2009.

10 ARIZONA STATE BOARD OF PHARMACY

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12  
13 By:   
14 HAL WAND, R.Ph.  
15 Executive Director  
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1 ORIGINAL OF THE FORGOING FILED  
this 25 day of March, 2009, with:

2 Arizona State Board of Pharmacy  
3 1700 West Washington Street, Suite 250  
4 Phoenix, Arizona 85007

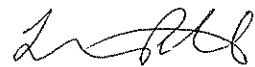
5 COPY OF THE FOREGOING MAILED  
BY CERTIFIED & REGULAR FIRST-CLASS MAIL  
this 25 day of March, 2009, to:

6 Joshua Adams  
7 3313 W. Constitution Drive  
8 Chandler, AZ 85226  
Respondent

9 COPY OF THE FOREGOING MAILED  
this 25 day of March, 2009, to:

10 Christopher Munns  
11 Assistant Attorney General  
12 1275 W. Washington Street, CIV/SGO  
Phoenix, Arizona 85007  
Attorney for the Board

13 Elizabeth A. Campbell  
14 Assistant Attorney General  
15 1275 W. Washington Street, CIV/LES  
Phoenix, Arizona 85007  
Attorney for the State

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